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WARNER BROS. ENTERTAINMENT INC.

8
9 **UNITED STATES DISTRICT COURT**
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

11 SERENDIP LLC & WENDY CARLOS, CASE NO. CV 08-07739 RGK (RCx)

12
13 Plaintiffs,

14 v.

The Honorable R. Gary Klausner

COUNTERCLAIM

15 WARNER BROS. ENTERTAINMENT
16 INC.,

17 Defendant.

18 **WARNER BROS. ENTERTAINMENT**
19 **INC.**

20 **Counter-Claimant,**

21 v.

22 **SERENDIP LLC, a New York limited**
liability company,

23 **Counter-Defendant.**
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1 Without conceding that it bears the burden of proof as to any of these issues,
 2 and reserving its right to add additional counterclaims as discovery progresses,
 3 Defendant and Counter-claimant Warner Bros. Entertainment Inc. (“Warner
 4 Bros.”) hereby asserts the following counterclaim against Plaintiff and Counter-
 5 defendant Serendip LLC, a New York limited liability company (“Serendip”)
 6 (collectively, “Plaintiffs”):

7 **JURISDICTION**

8 1. Warner Bros. is a Delaware corporation with principal place of
 9 business in Burbank, California.

10 2. On information and belief, Serendip is a limited liability company
 11 formed under the laws of the State of New York, with its principal place of
 12 business in New York.

13 3. This Court has original jurisdiction over Warner Bros.’ counterclaim
 14 pursuant to 28 U.S.C. § 1332 in that it is a civil action between citizens of
 15 different states in which the matter in controversy, exclusive of costs and interest,
 16 exceeds \$75,000.

17 4. This Court also has supplemental jurisdiction over Warner Bros.’
 18 counterclaim pursuant to 28 U.S.C. § 1367 in that the claim asserted herein is so
 19 related to the claims asserted in Plaintiffs’ complaint as to form the same case or
 20 controversy.

21 **UNFAIR COMPETITION**

22 **(Cal. Bus. & Prof. Code § 17200 et seq.)**

23 5. On or about January 25, 1980, Wendy Carlos (“Carlos”), on her own
 24 behalf and as president of Trans-Electronic Music, Inc. (“Trans-Electronic”),
 25 entered a “Composer Loanout Agreement” with Peregrine Filmmaatschappij,
 26 N.V. (“Peregrine”), which provided that Carlos would write, compose, arrange,
 27 orchestrate, and conduct the recording of music for the picture and trailer of “The
 28 Shining.” The parties agreed that all works created pursuant to the agreements

1 “is and shall be considered a ‘work made for hire’ for [Peregrine]”; and that
2 [Peregrine] is and shall be considered the author and composer of said material
3 for all purposes.”

4 6. The work entitled “Clockworks” was created and recorded by Carlos
5 pursuant to the Composer Loanout Agreement. “Clockworks” is therefore a
6 “work made for hire” under the terms of the Composer Loanout Agreement.

7 7. Also on or about January 25, 1980, Trans-Electronic and Peregrine
8 entered into a separate letter agreement (the “Letter Agreement”) whereby the
9 parties acknowledged that Trans-Electronic had produced a demonstration tape in
10 connection with “The Shining” and agreed that, for the additional sum of \$1,000,
11 “all musical compositions contained in said demonstration tape shall be deemed
12 included within the music composed by [Wendy Carlos] under [The Composer
13 Loanout Agreement].”

14 8. The work entitled “Valse Triste” is contained within the
15 demonstration tape referenced in the Letter Agreement. “Valse Triste” is
16 therefore a “work made for hire” under the terms of the Composer Loanout
17 Agreement and the Letter Agreement.

18 9. Warner Bros. is informed and believes, and on that basis alleges, that
19 Serendip is the successor-in-interest to Trans-Electronic and is therefore bound
20 by the Composer Loanout Agreement and the Letter Agreement.

21 10. Warner Bros. is the successor-in-interest to the rights obtained by
22 Peregrine in the Composer Loanout Agreement and the Letter Agreement.

23 11. Warner Bros. is informed and believes, and on that basis alleges, that
24 Serendip submitted an application to register a work entitled, “Rediscovering
25 Lost Scores” and individual works contained in “Rediscovering Lost Scores” to
26 the U.S. Copyright Office.

27 12. Among the individual works contained in “Rediscovering Lost
28 Scores” are recordings entitled, “Nocturnal Valse Triste” and “Clockworks.”

1 Warner Bros. is informed and believes, and on that basis alleges, that the
2 recording entitled “Nocturnal Valse Triste” is identical in all but name to the
3 recording entitled “Valse Triste” that was composed, arranged, orchestrated,
4 performed and/or recorded by Carlos for the picture and trailer of “The Shining.”

5 13. Warner Bros. is informed and believes, and on that basis alleges, that
6 Serendip informed the U.S. Copyright Office that “Rediscovering Lost Scores” and
7 the individual works contained therein were not works made for hire.

8 14. Warner Bros. is further informed and believes, and on that basis
9 alleges, that Serendip represented to the U.S. Copyright Office that it owned the
10 copyrights to “Rediscovering Lost Scores” and the individual works therein
11 pursuant to a transfer of all rights by the authors. Upon information and belief,
12 Serendip represented to the Copyright Office that Wendy Carlos and/or Rachel
13 Elkind are the authors of “Rediscovering Lost Scores” and the individual works
14 contained therein.

15 15. At the time of these representations to the U.S. Copyright Office,
16 Serendip knew that, in fact, (a) “Valse Triste” and “Clockworks” are works made
17 for hire; (b) Peregrine’s successor-in-interest is considered the author and
18 composer of “Valse Triste” and “Clockworks” for all purposes; and (c) Carlos did
19 not have the right to, and could not have, transferred all rights in “Valse Triste”
20 and “Clockworks.” Serendip also knew that “Nocturnal Valse Triste” is identical
21 to “Valse Triste” in all but name.

22 16. In reliance on Serendip’s false representations, the U.S. Copyright
23 Office issued copyright registration number SR 610-073 to Serendip for
24 “Rediscovering Lost Works” and individual titles contained therein. A copy of the
25 registration certificate is attached to the Complaint filed by Serendip and Carlos as
26 Exhibit B.

27 17. Warner Bros. is informed and believes, and on that basis alleges, that
28 the U.S. Copyright Office would not have issued copyright registration number SR

1 610-073 to Serendip for “Rediscovering Lost Works” and individual titles
2 contained therein if it had known that (a) “Valse Triste” and “Clockworks” are
3 works made for hire; (b) Peregrine’s successor-in-interest is considered the author
4 and composer of “Valse Triste” and “Clockworks” for all purposes; and (c) Carlos
5 did not have the right to, and could not have, transferred all rights in “Valse Triste”
6 and “Clockworks.”

7 18. Under the aegis of their fraudulent registration of, and claim to, the
8 copyright to “Valse Triste” and “Clockworks,” Serendip and Wendy Carlos have
9 enriched themselves by selling recordings, including compact discs, containing
10 “Valse Triste” and “Clockworks.”

11 19. As a direct consequence of Serendip’s actions, Warner Bros. has been
12 harmed because the public and the U.S. Copyright Office erroneously believes that
13 Serendip, and not Warner Bros., owns the copyright to “Valse Triste” and
14 “Clockworks.”

15 20. Warner Bros. is informed and believes that Serendip will continue to
16 claim the copyright to, and to sell recordings containing, “Valse Triste” and
17 “Clockworks” unless and until the court orders Serendip to cease and desist.
18 Serendip’s continuing wrongful conduct, unless and until restrained by an order of
19 this court, will cause great and irreparable harm to Warner Bros. Warner Bros. has
20 no adequate remedy at law for the injuries currently being suffered or which will
21 result in the future from Serendip’s continued wrongful conduct.

22 21. Serendip’s acts hereinabove alleged are unlawful, unfair and/or
23 fraudulent acts within the meaning of California Business and Professions Code
24 Section 17200 et seq.

